



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 11-312
March 1, 2011

AUCTION OF VHF COMMERCIAL TELEVISION STATION CONSTRUCTION PERMITS CLOSES

WINNING BIDDER ANNOUNCED FOR AUCTION 90

Down Payments Due March 15, 2011
Final Payments Due March 29, 2011
FCC Form 301 Due March 31, 2011

I. INTRODUCTION

1. On February 17, 2011, the Federal Communications Commission completed an auction of construction permits for two digital very high frequency (“VHF”) commercial television stations. This auction, which was designated Auction 90, raised (in net bids) a total of \$2,631,200, with one bidder winning both construction permits.

II. AUCTION RESULTS

2. This Public Notice provides detailed information concerning the winning bidder, down payments, final payments and/or refunds, long-form application (FCC Form 301) filing requirements, and licensing matters. Key information appears in the following attachments:

Attachment A: “Winning Bids” lists the winning bidder and both its total gross and net winning bid amounts.

Attachment B: “Bidder Payment/Refund” lists down payments and final payments owed by the winning bidder and refunds due, if any.¹

A copy of this Public Notice will be sent via overnight delivery to each qualified bidder.

III. POST-AUCTION PROCEDURES

A. Down Payments

3. The Commission’s rules require that the winning bidder in Auction 90 must have on deposit with the Commission enough funds to cover the down payments on its winning bids within ten business

¹ The amounts listed in Attachment B are based on upfront payments and net winning bids.

days after the release of this Public Notice, in this case by **6:00 p.m. Eastern Time (ET) on March 15, 2011.**² Specifically, the winning bidder's total deposit must be twenty percent of the aggregate net amount of its winning bids. Because the winning bidder's upfront payment is not sufficient to meet this requirement, the winning bidder must deposit additional funds to meet its required down payment.³

4. The amount due from the winning bidder is set out in the "Additional Amount Due after Upfront Payment Balance Applied Due by Mar 15, 2011" column of Attachment B.

5. A wire transfer(s) for the down payment must be received by the Commission by **6:00 p.m. ET on March 15, 2011.** Failure to complete this down payment process, consistent with the payment method described in this Public Notice, by 6:00 p.m. ET on March 15, 2011, will result in default.⁴

B. Final Payments

6. The winning bidder will be required to submit the balance of the net amount of its winning bids as set out in the "Final Balance Due By Mar 29, 2011 or (Refund)" column of Attachment B by **6:00 p.m. ET on March 29, 2011.**⁵ The winning bidder must pay the full amount of the Final Balance Due shown in Attachment B by 6:00 p.m. ET on March 29, 2011 (or by 6:00 p.m. ET on April 12, 2011, along with the five percent late fee required by section 1.2109(a) of the Commission's rules).⁶ Full and timely payment of winning bids and any applicable late fees must be made in accordance with section 1.2109(a) of the Commission's rules and must occur before action will be taken upon the winning bidder's long-form applications (FCC Form 301).⁷ Specifically, construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with section 1.2109(a).⁸

7. A wire transfer(s) of final payment must be received by the Commission by **6:00 p.m. ET on March 29, 2011** (or by 6:00 p.m. ET on April 12, 2011, along with the five percent late fee required by section 1.2109(a) of the Commission's rules).⁹ Failure to complete the final payment, consistent with the payment method described in this Public Notice, by 6:00 p.m. ET on March 29, 2011 (or by 6:00 p.m. ET on April 12, 2011, along with the five percent late fee) will result in default.¹⁰

C. Method of Payment for Down and Final Payments

8. All payments must be in U.S. dollars and made in the form of a wire transfer.¹¹ No checks,

² 47 C.F.R. § 1.2107(b).

³ *Id.*

⁴ See Section III. D., "Default and Disqualification Payments," below.

⁵ 47 C.F.R. § 1.2109(a).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Section III.D., "Default and Disqualification Payments," below.

¹¹ The wire transfer must be initiated by the winning bidder through its bank, authorizing the bank to wire funds from the bidder's account to the Commission's account, designated to receive payments for financial obligations resulting from Auction 90.

credit card payments, automated clearing house (“ACH”), or other forms of payment will be accepted. Each payment must be accompanied by a completed FCC Form 159.¹² Partially-completed copies of the FCC Forms 159 for the down payment and for the final payment will be sent to the winning bidder to facilitate submission of the correct payments.

9. The winning bidder is responsible for ensuring timely submission of its payment and for timely filing of accurate and complete FCC Remittance Advice Forms (FCC Form 159). The winning bidder should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for each wire transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.¹³ The winning bidder should obtain confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that the winning bidder’s payment has been received by the Commission in the proper account. For confirmation that the Commission has timely received the winning bidder’s down payment or final payment in the proper account, the winning bidder may contact Gail Glasser of the Office of Managing Director’s Auctions Accounting Group at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945.

10. Down payments and final payments must be preceded by an accurate and complete FCC Remittance Advice Form (FCC Form 159). At least one hour before placing the order for the wire transfer (but on the same business day), the winning bidder must fax the completed FCC Form 159 to U.S. Bank in St. Louis, Missouri, at (314) 418-4232. Proper completion of the FCC Form 159 is critical to ensuring correct credit of the winning bidder’s deposits. The winning bidder must use in its FCC Form 159 the same FCC Registration Number (FRN) used for the applicant in the applicant’s short-form application (FCC Form 175).

11. To submit funds by wire transfer, the winning bidder will need the following information:

ABA Routing Number: **021030004**

Receiving Bank: **TREAS NYC**

33 Liberty Street

New York, NY 10045

ACCOUNT NAME: **FCC**

ACCOUNT NUMBER: **27000001**

OBI Field: (Skip one space between each information item) “AUCTIONPAY”

APPLICANT FRN: (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: “D090”)

FCC CODE 1: (same as FCC Form 159, Block 28A: “90”)

PAYER NAME: (same as FCC Form 159, Block 2)

LOCKBOX NO.: **#979085**

¹² Copies of the FCC Form 159 may be obtained by calling the Commission’s Forms Distribution Center at (800) 418-3676 (outside Washington, DC) or (202) 418-3676. Copies of the FCC Form 159 can also be obtained via the Internet (<http://www.fcc.gov/formpage.html>) or by calling from the handset of a fax machine the Commission’s Fax Information System at (202) 418-0177.

¹³ See, e.g., Letter to Lee G. Petro, Esq. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 10-1270, 25 FCC Rcd 9046 (2010); Letter to David G. O’Neil, Esq. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 08-622, 23 FCC Rcd 4765 (2008).

12. Questions concerning the calculation and submission of down payments, final payments, the FCC Form 159, and refunds should be directed to Gail Glasser at (202) 418-0578.

D. Default and Disqualification Payments

13. The Commission imposes payment obligations on bidders that default on payments due after an auction closes and on those that are disqualified.¹⁴

14. If the winning bidder defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified), the defaulting bidder will be subject to the payment obligations described in section 1.2104(g)(2).¹⁵ These payment obligations include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a permit or license covering the same spectrum is won in an auction, plus an additional payment equal to a percent of the defaulter's bid or the subsequent winning bid, whichever is less.¹⁶ The additional default payment for Auction 90 permits was set at twenty percent of the applicable bid.¹⁷

15. If the winning bidder fails to remit the required down payment within ten business days after the Commission has released this Public Notice, in this case by March 15, 2011, the bidder will be deemed to have defaulted, its long-form application will be dismissed, and it will be liable for a default payment as described above.¹⁸

16. If the winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make a late payment within ten business days after the payment deadline, provided that it also pays a late fee equal to five percent of the amount due.¹⁹ If the winning bidder fails to pay (a) the balance of its winning bid by the payment deadline on March 29, 2011, or (b) the balance of its winning bid plus the late fee by the late payment deadline, on April 12, 2011, it will be deemed to have defaulted, and it will be subject to applicable default payments.²⁰

17. After full and timely payment of winning bids and any applicable late fees are received, construction permits will be awarded upon completion of the review of the winning bidder's long-form

¹⁴ See 47 C.F.R. §§ 1.2104(g), 1.2109.

¹⁵ 47 C.F.R. § 1.2104(g)(2).

¹⁶ *Id.* See also Auction of VHF Commercial Television Station Construction Permits Scheduled for February 15, 2011; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 90, *Public Notice*, DA 10-2008, 25 FCC Rcd 14880, 14917-18 ¶ 159 (2010) ("*Auction 90 Procedures Public Notice*").

¹⁷ *Id.*

¹⁸ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(b).

¹⁹ 47 C.F.R. §§ 1.2109(a), 73.5003.

²⁰ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(a), 1.2109(c).

applications and a determination that the applicant's long-form applications meet Commission requirements for grant.²¹

18. A bidder that is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of its upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions.²²

E. Refund of Excess Payments

19. Upfront monies on deposit that are in excess of an applicant's Auction 90 obligations may be refunded to the payer of record as identified on the FCC Form 159. To be eligible to receive a refund, an applicant must submit a refund request and provide wire transfer instructions. Each applicant can provide this information by using the Commission's Integrated Spectrum Auction System ("ISAS") and clicking on the "See Wire Transfer for Refund Purposes" link under the Post-Auction section of the My Auctions web page by **March 15, 2011**. After this date, an applicant must send a request for refund along with the necessary wire transfer instructions and FRN by fax to Gail Glasser of the Office of the Managing Director at (202) 418-2843 (FAX). Any questions concerning refunds should be referred to Gail Glasser at (202) 418-0578.

F. FCC Form 301

20. **Prior to midnight ET on March 31, 2011**, the winning bidder must submit electronically a properly completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station), including all required exhibits, for each construction permit for which it was the winning bidder in Auction 90.²³ Thus, the winning bidder must submit two FCC Form 301 applications.

21. An applicant that fails to submit the required long-form application before the specified deadline and fails to establish good cause for any late-filed submission shall be deemed to have defaulted and shall be subject to the payments set forth in section 1.2104(g) of the Commission's rules.²⁴ The Auction 90 winning bidder must file an accurate and complete long-form application for each construction permit for which it was the winning bidder in Auction 90. The long-form applications must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic filing system.²⁵ In accordance with the Commission's rules, the electronic filing of a complete FCC Form 301 must be accompanied by the appropriate application filing fee.²⁶ The information

²¹ 47 C.F.R. §§ 1.2109(a), 73.5003.

²² 47 C.F.R. § 1.2109(d).

²³ See 47 C.F.R. § 73.5005(a).

²⁴ See 47 C.F.R. §§ 1.2104(g), 1.2107(c), 73.5005(c).

²⁵ For information regarding electronic application filing, refer to "Mass Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301, 314, and 315," *Public Notice*, DA 01-283, 16 FCC Rcd 3989 (MMB 2001).

²⁶ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *First Report and Order*, FCC 98-194, 13 FCC Rcd 15920, 15984 ¶ 164 (1998).

submitted on the FCC Form 301 application by the winning bidder may not constitute a major change from any information specified in the winning bidder's previously-filed FCC Form 175.²⁷

22. For instructions and technical requirements for using the Media Bureau's electronic filing system, go to the electronic filing web site at <http://www.fcc.gov/mb/cdbs.html>. In the CDBS Electronic Filing System section of the page, click on the [CDBS Electronic Filing User's Guide](#) link. When filing FCC Form 301, an applicant must select "Long Form Application for Auction 90" on the Pre-form. For assistance with electronic filing, call the CDBS Help Desk at (202) 418-2662.

23. Commission staff will return applications not submitted in accordance with the procedures described in this Public Notice. The applicant is encouraged to pay the FCC Form 301 application filing fee electronically using the CDBS filing system in order to avoid processing delays.

G. Additional Post-Auction Filing Requirements

24. When filing complete FCC Form 301 applications, the Auction 90 winning bidder must submit the post-auction exhibits required by section 73.5005(a) of the Commission's rules. Specifically, section 73.5005(a)²⁸ requires that post-auction long-form applications include the exhibits mandated by section 1.2107(d) (providing a detailed explanation of the terms, conditions, and parties involved in any bidding consortium, joint venture, partnership, or other agreement or arrangement the applicant had entered into relating to the competitive bidding process);²⁹ section 1.2110(j) (requiring an applicant claiming bidding credit eligibility to describe how it satisfies the eligibility requirements for such bidding credit, and to list and summarize all agreements that affect such status, such as partnership agreements, shareholder agreements, management agreements, resale arrangements, and any other agreements, including oral agreements, that establish that the auction applicant will have both *de facto* and *de jure* control of the entity);³⁰ and section 1.2112(a) (requiring that each long-form application fully disclose ownership information and the real party or parties in interest in the applicant or application).³¹

25. An applicant seeking to qualify for a new entrant bidding credit under the "eligible entity" provisions of section 73.3555 must also provide information establishing its status in its long-form application.³² The Commission generally attributes the media interests held by substantial investors in, or creditors of, an applicant claiming new entrant status.³³ Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant are attributed to that bidder for purposes of determining its eligibility for the new entrant bidding credit, if the equity

²⁷ See 47 C.F.R. §§ 73.3522, 73.3572.

²⁸ 47 C.F.R. § 73.5005(a). See also Instructions for Form 301, Application for Construction Permit for Commercial Broadcast Station, Instructions for Section II: Legal Information, paragraph G. Item 10: Auction Authorization for auction-related exhibit filing requirements.

²⁹ 47 C.F.R. § 1.2107(d).

³⁰ 47 C.F.R. § 73.5007(a).

³¹ 47 C.F.R. § 1.2112(a).

³² 47 C.F.R. § 73.3555, Note 2(i). See also *Auction 90 Procedures Public Notice*, 25 FCC Rcd at 14896-97 ¶¶ 57-58 (overview of eligible entity standard for purposes of new entrant bidding credit).

³³ 47 C.F.R. § 73.5008(c) (attribution of mass media interests).

and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.³⁴

26. In the *Diversity Order*, the Commission relaxed the equity/debt plus attribution standard, to allow for higher investment opportunities in an entity meeting the definition of an “eligible entity.”³⁵ “Eligible entity” is defined in section 73.3555, Note 2(i) of the Rules.³⁶ Pursuant to the *Diversity Order*, the Commission will now allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33 percent threshold without triggering attribution provided: (1) the combined equity and debt in the eligible entity is less than 50 percent; or (2) the total debt in the eligible entity does not exceed 80 percent of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity.³⁷

27. An applicant claiming status as an eligible entity as its basis for its bidding credit eligibility must establish its status as part of its response to the multiple ownership question on Form 301.³⁸

28. The Commission’s “red light rule” implementing the Debt Collection Improvement Act will be enforced.³⁹ Under the red light rule, the Commission will not process applications or other requests for benefits filed by parties that have outstanding debts owed to the Commission.⁴⁰

H. Maintaining Accuracy of Information

29. After the auction closes, all required changes to an applicant’s information must be made by filing the applicant’s long-form applications (FCC Form 301). With the release of this Public Notice, applicants are no longer required to maintain the accuracy and completeness of information furnished on their short-form applications and exhibits.⁴¹

³⁴ *Id.*

³⁵ Promoting Diversification of Ownership In the Broadcasting Services, MB Docket No. 07-294, *Report and Order and Third Further Notice of Proposed Rule Making*, FCC 07-217, 23 FCC Rcd 5922 (2008) (“*Diversity Order*”).

³⁶ 47 C.F.R. § 73.3555, Note 2(i). An “eligible entity” shall include any entity that qualifies as a small business under the Small Business Administration’s size standards for its industry grouping, as set forth in 13 C.F.R. § 121.201, and holds (i) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or (ii) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or (iii) more than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

³⁷ See 47 C.F.R. § 73.5008(c).

³⁸ See FCC Form 301 - Section II-Legal, Item 4(d): Auction Authorization for “eligible entity” exhibit requirements. See also Instructions for Form 301, Application for Construction Permit for Commercial Broadcast Station, Instructions for Section II – Legal Information, paragraph B. Item 2: Parties to the Application.

³⁹ 47 C.F.R. § 1.1910.

⁴⁰ *Id.*; see also 47 C.F.R. § 1.2109(c) (post-auction defaults).

⁴¹ See 47 C.F.R. § 1.65.

I. Application Processing, Petitions to Deny and Construction Permit Grant

30. After its initial review of the long-form applications, the Media Bureau will issue a public notice listing the applications that are acceptable for filing. Pursuant to sections 1.2108(b) and 73.5006 of the Commission's rules,⁴² interested parties will have ten days from release of that public notice to file petitions to deny any of these applications.⁴³ The Media Bureau will use public notices generated by CDBS to start the ten-day period for filing petitions to deny. The public notice entitled "Broadcast Applications" will list such applications as "Accepted for Filing." An applicant may file an opposition to any petition to deny within five days of the filing deadline for petitions to deny of its long-form application.⁴⁴ Replies must be filed within five days of the filing deadline for oppositions to a petition to deny a long-form application.⁴⁵ The Commission reminds all parties and their counsel that the Commission intends to use its authority fully to deter the filing of frivolous pleadings.⁴⁶

31. After the long-form application review process, if the Commission determines that additional payment from an applicant is due, the Media Bureau will provide further instructions in a future public notice or by demand letter.⁴⁷ If the Commission determines that an applicant is otherwise qualified, that there are no substantial and material issues of fact, and that no additional payments are due, the Commission will grant the construction permit.⁴⁸

IV. OTHER IMPORTANT INFORMATION

A. Maintaining Prohibition on Certain Communications

32. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements, unless such applicants have identified each other on their short-form applications as parties with whom they have entered into agreements under section 1.2105(a)(2)(viii).⁴⁹ As explained more fully in the *Auction 90 Qualified Bidders Public Notice*, this prohibition began at the short-form application filing deadline at 6:00 p.m. ET on December 15, 2010, and continues until the down payment deadline, which is 6:00 p.m. ET on March 15, 2011.⁵⁰

⁴² 47 C.F.R. §§ 1.2108(b), 73.5006(b).

⁴³ 47 C.F.R. § 73.5006.

⁴⁴ 47 C.F.R. § 73.5006(c).

⁴⁵ *Id.*

⁴⁶ See Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, FCC 96-42, 11 FCC Rcd 3030 (1996).

⁴⁷ Media Bureau staff may determine, for example, that a winning bidder is not entitled to the level of bidding credit that it has claimed and may require an additional payment to cover the amount of any percentage discount for which it was not eligible.

⁴⁸ See 47 C.F.R. §§ 1.2108(d), 1.2109(a).

⁴⁹ 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1). See also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17,546 (2001); *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15,293, 15,297-98 ¶¶ 7-8 (2000).

⁵⁰ See Auction of VHF Commercial Television Station Construction Permits, Three Bidders Qualified to Participate in Auction 90, *Public Notice*, DA 11-136 (WTB/MB February 4, 2011). See also *Auction 90 Procedures Public Notice*, 25 FCC Rcd at 14886 ¶ 13.

33. The prohibition on certain communications applies to all applicants in Auction 90 (unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under section 1.2105(a)(2)(viii)), regardless of whether an applicant became a qualified bidder or actually participated in the bidding, and the prohibition continues for all applicants until the down payment deadline regardless of whether an applicant is a winning bidder or needs to make an additional payment by the down payment deadline.⁵¹ Each applicant in this auction certified its compliance with section 1.2105(c) when its short-form application was filed.⁵²

B. Return of SecurID® Tokens

34. The SecurID® tokens distributed to qualified bidders are tailored to this auction and will not work for future auctions. Each bidder should return its SecurID® tokens to the Commission for recycling. The Commission will send each bidder, along with the copy of this Public Notice, a pre-addressed, stamped envelope to return its SecurID® tokens. Each bidder should return the tokens by **March 15, 2011**.

C. Contact Information

35. For further information, contact:

News Media

Wireless Telecommunications Bureau

Matt Nodine at (202) 418-1646

Media Bureau

Janice Wise at (202) 418-8165

Licensing Information

Service Rules, Policies, Regulations
Licensing Issues, Engineering Issues
Due Diligence, Incumbency Issues,
FCC Form 301 questions

Media Bureau, Audio Division

Shaun Maher (Attorney) or
Adrienne Denysyk (Attorney), at
(202) 418-1600

Auction Payment Information

Wire Transfers
Refunds

FCC Auctions Accounting Branch

Gail Glasser at (202) 418-0578, or
alternatively, Theresa Meeks at (202) 418-2945, or
(202) 418-2843 (fax)

Auction 90 Information

General Auction Information, Process, and
Procedures

Auctions and Spectrum Access Division

Barbara Sibert, Project Manager, or
Jeff Crooks, Auction Analyst, at (202) 418-0660

Auction Rules, Policies, and Regulations

Lynne Milne, Attorney, at (202) 418-0660

⁵¹ *Id.*

⁵² *See* 47 C.F.R. § 1.2105(a)(2)(ix).

Accessible Formats

Braille, large print, electronic files, or
audio format for people with disabilities

FCC Internet Sites**Consumer and Governmental Affairs Bureau**

(202) 418-0530, or (202) 418-0432 (TTY)

fcc504@fcc.gov

<http://www.fcc.gov>

<http://wireless.fcc.gov/auctions>

<http://www.fcc.gov/mb/cdbs.html>

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